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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2011-166**

12 **ELAINE WALKER THWEATT, AKA**
13 **ELAINE KATHLEEN WALKER, AKA**
14 **ELAIN K. WALKER, AKA**
15 **ELAINE K. KRAL**
617 Bedford Avenue
Clovis, CA 93611
16 Registered Nurse License No. 414225
Nurse Practitioner Certificate No. 9482
Nurse Practitioner Furnishing Certificate
No. 9482

ACCUSATION

17 Respondent.

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20 Complainant alleges:

21 **PARTIES**

22 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
23 official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"),
24 Department of Consumer Affairs.

25 **Registered Nurse License**

26 2. On or about July 31, 1987, the Board issued Registered Nurse License Number
27 414225 to Elaine Walker Thweatt, also known as Elaine Kathleen Walker, also known as Elain
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1 K. Walker, and Elaine K. Kral ("Respondent"). The registered nurse license was in full force and
2 effect at all times relevant to the charges brought herein and will expire on August 31, 2011,
3 unless renewed.

4 **Nurse Practitioner Certificate**

5 3. On or about October 21, 1997, the Board issued Nurse Practitioner Certificate
6 Number 9482 to Respondent. The nurse practitioner certificate was in full force and effect at all
7 times relevant to the charges brought herein and will expire on August 31, 2011, unless renewed.

8 **Nurse Practitioner Furnishing Certificate**

9 4. On or about April 28, 1998, the Board issued Nurse Practitioner Furnishing
10 Certificate Number 9482 to Respondent. The nurse practitioner furnishing certificate was in full
11 force and effect at all times relevant to the charges brought herein and will expire on August 31,
12 2011, unless renewed.

13 **STATUTORY PROVISIONS**

14 5. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
15 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
16 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
17 Nursing Practice Act.

18 6. Code section 2764 provides, in pertinent part, that the expiration of a license shall not
19 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
20 to render a decision imposing discipline on the license. Under Code section 2811, subdivision
21 (b), the Board may renew an expired license at any time within eight years after the expiration.

22 7. Code section 2761 states, in pertinent part:

23 The board may take disciplinary action against a certified or licensed
24 nurse or deny an application for a certificate or license for any of the following:

25 (a) Unprofessional conduct, which includes, but is not limited to, the
26 following:

27 (1) Incompetence, or gross negligence in carrying out usual certified or
28 licensed nursing functions.

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2 REGULATORY PROVISIONS

3 8. California Code of Regulations, title 16, section 1442, states:

4 As used in Section 2761 of the code, 'gross negligence' includes an
5 extreme departure from the standard of care which, under similar circumstances,
6 would have ordinarily been exercised by a competent registered nurse. Such an
7 extreme departure means the repeated failure to provide nursing care as required or
8 failure to provide care or to exercise ordinary precaution in a single situation which
9 the nurse knew, or should have known, could have jeopardized the client's health or
10 life.

11 9. California Code of Regulations, title 16, section 1443, states:

12 As used in Section 2761 of the code, 'incompetence' means the lack of
13 possession of or the failure to exercise that degree of learning, skill, care and
14 experience ordinarily possessed and exercised by a competent registered nurse as
15 described in Section 1443.5.

16 COST RECOVERY

17 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licentiate found to have committed a violation or violations of
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case.

21 BACKGROUND INFORMATION

22 11. On or about February 5, 2004, R.T., presented to the Clovis Community Medical
23 Center with complaints of severe abdominal pain, decreased appetite, mild nausea, and difficulty
24 sleeping. When R.T. arrived at the hospital, she was only able to walk bent over due to the
25 abdominal pain. R.T. was triaged and then seen by Respondent, who immediately gave R.T. two
26 Vicodin tablets orally. Respondent performed a limited physical examination and ordered a
27 urinalysis despite a lack of urinary symptoms or complaints. Respondent diagnosed R.T. with a
28 urinary tract infection and discharged R. T. with antibiotics, pain medication, and instructions to
follow up with her primary care physician.

12 12. On February 15, 2004, R.T. returned to Clovis Community Medical Center with
13 continuing severe abdominal pain. A CT scan showed a large mass in the right hemi-pelvis
14 contiguous with cecum and extending to the right pelvic side wall. The scan showed fluid

1 collection consistent with right lower quadrant abscess. The physician's differential diagnosis
2 included inflammatory bowel disease with subsequent perforation and abscess formation, pelvic
3 inflammatory disease with tubovarian abscess, and appendicitis with a ruptured appendix.
4 Surgery was performed on February 16, 2004 that disclosed R.T. had an ulceration of cecum with
5 pericecal abscess and perforated appendix.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Gross Negligence)**

8 13. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a)(1),
9 on the grounds of unprofessional conduct, in that while on duty as a nurse practitioner at Clovis
10 Community Medical Center, Clovis, California, Respondent committed repeated acts of gross
11 negligence as defined in California Code of Regulations, title 16, section 1442 as follows:

12 a. Respondent administered two Vicodin tablets to R.T. prior to completing an initial
13 assessment of R.T.'s severe acute abdominal pain. Administration of the medication should not
14 be administered prior to the assessment because it can cause medical complications if R.T. had
15 required immediate surgical intervention.

16 b. Respondent failed to conduct a proper examination of R.T., including but not limited
17 to failing to obtain a medical history and failing to perform pelvic and rectal examinations based
18 on R.T.'s presenting symptoms.

19 c. Respondent failed to order appropriate tests and imaging to assess and treat R.T.,
20 including but not limited to a pregnancy test, an abdominal ultra sound, CT scan and a complete
21 blood count.

22 d. Respondent failed to follow applicable protocols or clinical guidelines regarding
23 patients with acute abdominal pain.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Incompetence)**

26 14. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a)(1),
27 on the grounds of unprofessional conduct, in that while on duty as a nurse practitioner at Clovis
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1 Community Medical Center, Clovis, California, Respondent committed the following acts that
2 constitute incompetence as defined in California Code of Regulations, title 16, section 1443.

3 a. Respondent failed to perform a proper medical examination for a patient with R.T.'s
4 presenting symptoms.

5 b. Based on R.T.'s presenting symptoms, Respondent failed to make an appropriate
6 medical assessment of R.T.'s condition and referral for appropriate diagnostic evaluation.

7 c. Respondent failed to properly document the medical record with all pertinent
8 information regarding medication(s) consumed by R.T. and when the medication(s) were
9 consumed.

10 THIRD CAUSE FOR DISCIPLINE

11 (Unprofessional Conduct)

12 15. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a), on
13 the grounds of unprofessional conduct, as more particularly set forth in paragraphs 13 and 14,
14 incorporated herein as though set forth at length.

15 PRAYER

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Board of Registered Nursing issue a decision:

18 1. Revoking or suspending Registered Nurse License Number 414225, issued to Elaine
19 Walker Thweatt, also known as Elaine Kathleen Walker, also known as Elain K. Walker, and
20 Elaine K. Kral;

21 2. Revoking or suspending Nurse Practitioner Certificate Number 9482, issued to Elaine
22 Walker Thweatt, also known as Elaine Kathleen Walker, also known as Elain K. Walker, and
23 Elaine K. Kral;

24 3. Revoking or suspending Nurse Practitioner Furnishing Certificate Number 9482,
25 issued to Elaine Walker Thweatt, also known as Elaine Kathleen Walker, also known as Elain K.
26 Walker, and Elaine K. Kral;

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3 4. Ordering Elaine Walker Thweatt, also known as Elaine Kathleen Walker, also known
4 as Elain K. Walker, and Elaine K. Kral to pay the Board of Registered Nursing the reasonable
5 costs of the investigation and enforcement of this case, pursuant to Business and Professions
6 Code section 125.3; and,

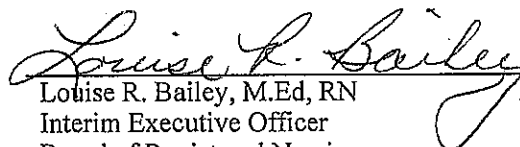
7 5. Taking such other and further action as deemed necessary and proper.

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10 DATED:

8/31/10



Louise R. Bailey, M.Ed, RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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